

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

GIUSEPPE MAROTTA et al.,

Plaintiffs

V.

SUFFOLK COUNTY,
Defendant

C.A. NO. 05-10032-MEL

SIXTEENTH AMENDED COMPLAINT AND JURY DEMAND

INTRODUCTION

1. This is an action for declaratory relief and monetary damages brought by employees of the Suffolk County House of Correction, on behalf of themselves and others similarly situated, against Suffolk County for violations of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (FLSA).”

JURISDICTION AND VENUE

2. This court has jurisdiction over this case pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1331. Declaratory relief is authorized pursuant to 28 U.S.C. § 2201 and 2202. This court is the proper venue pursuant to 28 U.S.C. § 1391(b). This Court has pendent jurisdiction over the state law claims pursuant to *United Mineworkers v. Gibbs*, 383 U.S. 715 (1966).

PARTIES

3. The Plaintiffs Giuseppe Marotta, Alesendro Basile, Gregory Baker, Brian Barden, Joseph Bennett, Crystal Brown, Paul Busa, Christina Chaney, Michael T.

Coakley, Sharon Corbin, Daniel Daley, Peter Daly, Lisa Daniel, Paul Demille, Edward J. Denehy, Jr., Neville DePass, Sr., Michael J. Doherty, Billy Dowd, Robert F. Downs, Richard J. Flynn, Thomas J. Flynn, Timothy Frates, Daniel Galvin, James Glavin, Walter Gonzalez, James T. Gorman, Barbara Gray, Dennis Guilfoyle, Theresa Hall, Michael Haugh, Daniel J. Hickey, Thomas Hogan, Annjanette Howard, Dean Johnson, John Katikakis, James F. Keogh, Bryan Kaiser, Earl Lacaillade, Shawn Leonard, Anthony J. Morganelli, Charles Mattar, Jarrod McCarthy, John T. McGee, Jason McGrane, Brian McPherson, Robert Milisi, Robert Morgan, Joseph A. Munger, Bruce Owens, Jeff Parillo, William Paul Petersen, William S. Power, Richard Powers, Sean Puglsey, Richard Rondeau, Christopher D. Ryan, Troy Salvetti, Edward Sciarratta, Michael Simpson, Janet M. Sinclair, Scott Smith, Brian Solimini, Jay Tully, Kenneth Sheehan, David Stock, Tom Tucci, Steve Varney, Keith Wallace, Antonio Whitfield, Davis Williams, Stephanie Wright, Robert Zoebisch, John Gaeta, Thomas Harris, Michael Nephew, Jonathan Amate, Peter Abban, Nicholas Adams, Alejandro Aguilar, Brian Ahearn, William Ahern, Christopher Alessi, Michael F. Amatucci, Anthony Andrews, Anthony Arcieri III, Edward Ardolino, Charles M. Bailey, Charles Balboni, Michael Balzarini, Edward J. Bannon, Danevna Barbour, Kevin M. Barrett, Roseanne Barrows, Daniel Bausemer, Richard A. Belinsky, Jr., Julio Bello, Yvette Bennett, William Berardinelli, Anthony Bernard, Maureen Bland, Leo Boudreau, Al Boudrow, Wayne Ed Bourgeois, Randy S. Brooks, Frank Burgess, Jr., Latonya Bynum, Patrick Cadigan, Robert T. Call, Victor Caraballo, Dean W. Cardillo, Gerardo Carrasquillo, William A. Carroll, Corry D. Carter, Ninfa Cepeda, Debra Charles, Patricia Cheatham, Anthony Chianca, Benjamin Chin, Sean M. Clark, Sr., John T. Clasby, Dalton G. Clayton, Michael Connaire, John P.

Connolly, James G. Coppinger, James F. Coughlin, Felicia Cowan, Mark Coye, William Cranshaw, Alicia Crosby, Thomas Cunniff, Richard F. Curtin, David Dackers, John M. D Aiello, John DeBassio, Robert DeBole, John DeGiacomo, Robert G. Delaney, William Delaney, Errol DePass, John DelSolio, Lorraine Denehy, Juan Diaz, Steven Diaz, David DiCenso, Thomas S. Donahue, Lauren Donovan, Thomas C. Donovan, Gail J. Dwyer, Edward Eames, John Farragher, Deyanira Feliz, Domenic Festa, Francis Finn, Jeffrey P. Fiorentino, Timothy S. Fistori, Dana FitzPatrick, Shaunette Fitzpatrick, Edward T. Fletcher, Todd Flynn, Terrance P. Foley, Rachel A. Fuller, John Furney, Robert F. Galante, Brenda Garcia, Michael Gentile, Jarrod Gero, Christopher L. Gillespie, Matt Gilligan, Adalberto Gomez, David R. Granese, Michael Griffin, Jason A. Gross, William Guerrero, Paul G. Guthro, Robert P. Hamilton, Elizabeth Handrahan, Janine Handrahan, Donna Hartung, John Hayes, Thomas A. Healy, Jr., Brenda Henderson-Brown, Gary A. Henry, Eric Hester, Bruce Higgins, Andrew Hill, Mary Holton, Todd Howell, Michael Hubert, Kevin E. Hughes, David A. Hurvitz, Jesus R. Iraola, Ricardo Iraola, Jennifer Jackson, William Jackson, Jr. Richard Jarvis, Dana C. Johnson, Shawn Johnson, Ivory Jones, Fred D. Josey, Jr., Owen F. Julius, James S. Kane, Lauren Kelly, David P. Kenneally, William D. Kenneally, Mark Kepple, Craig Kingston, Michael S. Lally, Nils Leaf, Thomas P. Lee, Ryan Lees, Henry A. Lehman, Joseph Lizotte, Angel Lopez, Nicholas LoPriore, Donald Loud, Jennifer Lynch-Babbin, Anthony Lyons, Karolyn Lyons-Prather, Scott MacDonald, David C. Mahoney, John Mahoney, Mark A. Marotta, Anna Marie Matos, Michael Matulonis, Ann McAuliffe, Eugene P. McCarthy, Charles R. McCormack, Sean W. McCormack, Eileen McHugh, Mark McHugh, Ryan P. McHugh, Thomas A. McKenna, Chris E. McNamara, Gene McNeil, Jr., Daniel J. Meany, III, Ellen

L. Melaugh, John Melchin, Luther J. Miles, Sr., Peter G. Miller, Michael A. Misci, Billy J. Mobley, Robert Monahan, Elizabeth Montanez, Sean P. Mortimer, Steven Muldowney, John J. Murad, John J. Murphy, Scott C. Murphy, Daniel R. Napolitano, Kenneth J. Nobile, Jr., John O Callaghan, Michael O Day, Ford William O Leary, Frederick J Opanasets, Leroy J. Osborne, Christopher Page, Anthony D. Paige, Stathis Panos, Avianne E. Philbert, Angela Pina, Robert Pizzi, Paul Plakias, Debra M. Powers, Jennifer A. Racette, Stephen T. Rayne, Steven Richman, Joseph Ristino, Nassim Rizvi, John E. Roberts, Jr., Sean Ross, Robert W. Rowland, Franco Russo, Salvatore V. Russo, John J. Ryan, Arthur M. Sacco, Anthony Saitta, James Sauverse, Joseph L. Shea, Michael J. Shea, Lisa Sheehan, Richard Silkes, Kevin Sims, Sr., Scott Sinclair, Dwight B. Smith, Antonio Sousa, Jeffrey Sprague, Brian Stack, Christopher Summers, James Terrazzano, Sylvia Thomas, James M. Tobin, Kelly D. Torrejon, Marcus Torrejon, William J. Torres, Richard Townsend, Derek Trainor, Robert Troy, Juan R. Vargas, Joseph J. Vecchione, Ismael Velez, John Vencile, Robert Walker, Thomas Walsh, Michael J. White, Mark Whitley, James Williams, John Winnett, Frederick Wortman, Jr., Dianne Zene, Christopher Zero, Christopher Blaney, Christopher Boujoukas, Edwige Bourgogne, Glen Campbell, William Ford, Haley Fortier, Raymond Harris, James Hill, Ronald Lees, Paul McCarthy, Michael Powers, Yolanda Smith, Keith Storlazzi, John K. Sullivan, Regina Williams, Joseph Gatto, Stephen Gatto, Stephen Logan, Erica Lopez, Lester Licone, Jim Costello, Thomas Curran Michael Carboneau, Peter Moccio, David Mahoney, John Creamer, Thomas Davis, Justin Dean, David Kitterick, William Miller, Jillian Strong, James Farricy, Michael Connaire, and Stephen McLauhlin are current or former

employees of the Defendant Suffolk County, who are or were employed as corrections officers at the Suffolk County House of Correction.

4. The Plaintiffs Jason A. Gross, Micah Brinson, Edwige Bourgogne, Jamal Lyons, Jillian Strong, Byron Graff, Steven Ashman, Jeffrey Bouffard, Patrick McCrawe, Larry Williams, Jodi Lieberman, Antonio Abreu, Brandie Thornton, Alexis Thornton, Julie Bickford are employees of the Defendant, Suffolk County, who have at times relevant to this Complaint attended training sessions at the Defendant s'Basic County Corrections Academy.

5. The Defendant, Suffolk County, is an independent body politic, organized under the laws of the Commonwealth of Massachusetts, located in Boston, Suffolk County, Commonwealth of Massachusetts.

FACTUAL ALLEGATIONS

6. The Plaintiffs are e'mployees w'ithin the meaning of the FLSA.

7. The Defendant is an e'mployer w'ithin the meaning of the FLSA.

8. The Plaintiffs are members of a labor organization, AFSCME Council 93, AFL-CIO, Local 419 (the U'nion).'

9. The Union and the Defendant are parties to a collective bargaining agreement, which sets forth terms and conditions of employment that uniformly apply to the Plaintiffs and other employees assigned to the Suffolk County House of Correction, including hourly rates of pay, and circumstances in which officers are entitled to receive overtime pay and the addition of certain premiums to their normal hourly rate of pay (hereinafter, p'remium pay).'

10. Pursuant the collective bargaining agreement, the Plaintiffs are entitled to receive premium pay for:

11. Educational Incentives, including \$.72 per hour for having attained an associate's degree, \$1.20 per hour worked for the attainment of a bachelor's degree; and \$1.44 per hour worked for the attainment of a master's degree (Article XIX, Section 3);

12. Weekend Differential, including \$1.00 per hour for all regularly scheduled hours worked between the hours of 11:00 p.m. on Friday and 11:00 p.m. on Sunday (Article XIX, Section 9);

13. Shift Differential, including \$1.05 per hour for all regularly scheduled actual hours worked on a night shift (Article XIX, Section 10);

14. Public Safety, including \$1.30 per hour for employees graded as CO-1, CO-2, and CO-3, and \$1.54 per hour for employees graded as CO-4 (Article XIX, Section 11);.

15. The Plaintiffs and similarly situated employees are entitled to receive one and one half times their regular rate of pay for hours worked that are defined as overtime hours by the FLSA or the terms of the collective bargaining agreement.

16. In calculating overtime payments due the Plaintiffs and other similarly situated employees entitled to receive premium pay under the collective bargaining agreement, the Defendant does not take into account premium pay to which the Plaintiffs might be entitled under the collective bargaining agreement, but calculates their payments on the basis of their non-premium rates of pay.

17. The Defendant is aware that the foregoing practices violate the FLSA, but has willfully and knowingly continued to violate it, despite demands made by the Plaintiffs' employee union that it cease and desist its violations of the FLSA.

**COUNT I
VIOLATION OF 29 U.S.C. § 207
UNDERPAYMENT OF OVERTIME DUE**

18. The Defendant has willfully violated the FLSA by failing to calculate and pay overtime payments for the Plaintiffs and similarly situated employees on the basis of the premium hourly pay required under the collective bargaining agreement, including but not limited to, in the manner described above.

19. The Plaintiffs and similarly situated employees have been harmed, injured and damaged as a result of the Defendant's violation of the FLSA.

**COUNT II
FAILURE TO PAY OVERTIME WAGES FOR WORK PERFORMED BY
CANINE OFFICERS
VIOLATION OF FLSA**

20. The Plaintiffs incorporate by reference all previous allegations made herein.

21. The Plaintiff Boujoukos and other corrections officers were employed as Canine Officers by the Defendant.

22. As part of their responsibilities, Boujoukos and other officers were required to keep dogs, which were or are the property of the Defendant, at their homes.

23. Boujoukos and other similarly situated officers were responsible, *inter alia*, on a daily basis, for the proper care, grooming, cleaning, feeding, exercising, and training of their dogs, and to transport the dogs to and from the House of Correction each day that they were scheduled to work.

24. Boujoukous and other officers were also responsible for taking the dogs in their home custody for veterinary care and to attend regularly scheduled canine demonstrations.

25. The aforementioned activities are activities for which compensation must be paid under the FLSA.

26. In violation of the FLSA, the Defendant did not pay Boujoukos or other similarly situated officers overtime compensation for this "work" performed outside their regularly scheduled shifts.

27. The Plaintiffs have been harmed, injured, and damaged by the Defendant s' violation of the FLSA.

COUNT III
VIOLATION OF G.L. C. 149, § 148
FAILURE TO MAKE TIMELY PAYMENTS OF OVERTIME

28. The Plaintiffs incorporate by reference all previous allegations made herein.

29. Overtime payments due the Plaintiffs are wages within the meaning of G.L. c. 149, § 148.

30. The Defendant has violated G.L. c. 149, § 148 by failing to pay the Plaintiffs overtime wages due and owing within the time specified by G.L. c. 149, § 148.

31. The Plaintiffs have been harmed, injured and damaged by the Defendant s' violation of G.L. c. 149, § 148.

32. The Plaintiffs have satisfied all prerequisites to suit under G.L. c. 149, § 148 and § 150. (Exhibit 1.)

COUNT IV

**VIOLATION OF 29 U.S.C. § 207
UNDERPAYMENT OF OVERTIME DUE
TRAINING ACADEMY**

33. The Defendant has willfully violated the FLSA by failing to calculate and pay overtime payments to the Plaintiffs, including but not limited to those mentioned in paragraph 4 and similarly situated employees, for hours of work suffered in connection with their attendance at the Basic County Corrections Academy.

34. The Plaintiffs and similarly situated employees have been harmed, injured and damaged as a result of the Defendant's violation of the FLSA.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs request that this Court enter a judgment:

- a) declaring that the acts complained of herein are in violation of the FLSA and G.L. c. 149, § 148;
- b) awarding the Plaintiffs back pay, liquidated damages, treble damages, costs and attorney's fees, as provided by the FLSA and G.L. c. 149, § 150;
- c) directing the Defendant to take such affirmative steps as are necessary to ensure that the effects of these unlawful employment practices are eliminated and do not continue to affect Plaintiffs' employment opportunities;
- g) enjoining and permanently restraining these violations of the FLSA and G.L. c. 149, § 148;
- h) granting such other and further relief as this Court deems necessary and proper.

JURY DEMAND

PLAINTIFFS DEMAND A TRIAL BY JURY.

Respectfully submitted,

THE PLAINTIFFS

By their Attorney,

[s/Daniel W. Rice](#)

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